

## Minority matters

Vol. 6, No. 177, June 12, 2000

### Draft Bills on Opposition Rights Suspended by Parliament

I dare to argue that the parliament works efficiently only if the majority has been formed in it. But it works even better if there's also the minority, - announced Volodymyr Filenko, MP, on June 2, 2000, when the parliament of Ukraine debated two draft bills on activities of the opposition in the Verkhovna Rada. To date rights and functions of the political opposition in Ukraine and issues of its activity in the parliament have not been settled by the legislation.

By the way, similar blank spaces can be found when it comes to definition and activities of the parliamentary majority. Pursuant to the results of the April 2000 referendum, relevant changes should be made to Article 90 of the Constitution. The draft bill on implementation of the referendum results, submitted by the President of Ukraine, contains a provision that the President of Ukraine may also terminate the authority of the Verkhovna Rada of Ukraine prematurely should the Verkhovna Rada of Ukraine fail to form, within one month, a permanently functioning majority. Critical comments, made in the pre-referendum time in the context of the lack of clear criteria defining permanent, functions and the majority, may be repeated now, as neither the referendum results nor the President's draft implementation bill gave any answer to those points.

Meanwhile, members of the parliament decided to begin cultivating the legal virgin lands from drafting house rules for the parliamentary opposition and the minority. In February 2000, two draft bills were submitted to the parliament: On the Parliamentary Opposition (by Volodymyr Filenko, member of the Reforms-Congress faction) and On the Political Opposition in the Verkhovna Rada of Ukraine (by Vyacheslav Koval (Ukrainian People's Rukh (Udoenko), Oleksandr Karpov (People's Democratic Party) and First Vice Speaker, leader of United Socialist Democrats Victor Medvedchuk).

Of course, it would be absurd to claim there had been no notion of opposition in Ukraine's political life and vocabulary before. On the contrary, the term enjoyed - and still enjoys - remarkable attention and demand. The most common notion has been constructive opposition, a specific invention of the Ukrainian political class. In mid-1990, the constructive opposition niche was occupied by the Ukrainian People's Rukh. At that time being in constructive opposition allowed to be selective and support or criticize actions of the president, the Cabinet or the parliament depending on whether or not they [i.e., the actions] suited the party leadership.

Generally, the meaning of opposition tended to change depending on the goals pursued by announcing one's being in opposition. Sometimes it seemed that every representative of Ukraine's political class and all political parties were in opposition to something: from the reform course to Ukraine's relations with the IMF, to specific decisions in the social field. In fact, there would be nothing wrong with that, unless the attitudes displayed paradoxes of the Ukrainian opposition. A number of partisan politicians occupied positions in the national or local government, and could influence the policy-making process directly or indirectly, while announcing being in opposition to the very state power they represented. A noteworthy example was the previous parliament, chaired by leader of the Socialist Party of Ukraine Oleksandr Moroz, one of the most consistent critics of President Kuchma and his course. Senior officials in a number of regions were members of the constructively oppositional Rukh. Hence, no matter how weird this could appear, some time ago it was legal and possible to combine being a state official with being in opposition. At some point, the opposition in its common Ukrainian form ceased to justify its existence, and the notion lost its meaning in the national political vocabulary. The oppositional political forces failed to make proposals that would attract potential voters. During the recent presidential elections the left wing of Ukraine's political spectrum demonstrated its inability to consolidate for the polling day. Today, processes of splits-up in left-wing political parties continue under the influence of a variety of internal and external factors.

Yet, recently the notion of being in opposition, primarily the notion of parliamentary opposition, has developed a new meaning. Nowadays, in Ukraine's supreme law-making body the notion of opposition is closely linked to the phenomenon of the parliamentary minority. The processes of emergence and structural organization of the current parliamentary minority, in their turn, originate from the velvet revolution in the Ukrainian parliament in January 2000 (see Research Update's No.No.157, 158 at <http://www.ucipr.kiev.ua>). Then, independent Ukraine's first President Leonid Kravchuk voiced the decision of 237 MPs to declare themselves the majority. The new majority was formed of

representatives of both Rukh factions, the People's Democratic Party's faction, United Social Democrats, the Working Ukraine, the Greens, the Hromada, the Batkivshchyna, the Reforms-Congress, the Vidrodzhennya Rehioniv group and the Independents, as well as some non-faction MPs. The key purpose of the new majority was declared as establishment of constructive cooperation between the branches of power and shared responsibilities of the President, the parliament and the Cabinet for pursuing social and economic transformation. The major shake-up resulted in the dismissal of left-wingers from the key positions in the Verkhovna Rada. Leader of the Peasant's party and former presidential candidate Oleksandr Tkachenko was voted down from the position of the Speaker and the seat was occupied by PDP representative Ivan Pliushch (see Research Update's No.No.157, 158 at <http://www.ucipr.kiev.ua>). In the politically tense confrontation between the majority and the minority in January 2000, left-wingers failed to keep their positions in the Verkhovna Rada and suffered substantial losses in terms of control over parliamentary committees. Before the velvet trickery, as the left-wingers usually refer to the January 2000 transformations in the parliament, the Communist faction had controlled the situation in the Rada. Representatives of the Communist faction chaired six parliamentary committees and occupied 13 positions as deputy chairmen and first deputy chairmen of the committees. A Communist, Adam Martyniuk, was Vice Speaker of the parliament. As a result of the political restructuring of the parliament in January 2000, the Communist faction lost control and most of influence, and actually lost three members who migrated to other factions. The current parliamentary minority, i.e., under the circumstances, the opposition, includes mostly representatives of left-wing forces: the Socialists, some members of the Peasant's party, the Communists, the Progressive Socialists, as well as a number of non-left MPs who did not wish to join the majority for a variety of reasons.

In the context of these complicated processes of structural re-organization of the Ukrainian parliament the bills on the opposition, no matter how imperfect and contradictory, can be seen as an effort to provide an adequate legal framework to the mess of political definitions and to answer clearly who is who in the parliament and what the responsibilities are.

The draft law On the Parliamentary Opposition, proposed by Volodymyr Filenko, the political opposition in the parliament is defined as guaranteed by the Constitution of Ukraine systematic expression of public disagreement of certain parliamentary groups and factions with the political course of the Cabinet of Ministers of Ukraine, aiming at changing that political course or resignation of certain members of the Cabinet of Ministers of Ukraine, or its resignation as a whole. The draft was perfectly clear in refusing to extend the definition of political opposition to include activities aiming at liquidation of independence of Ukraine; overthrowing the current constitutional order through violence; violation of sovereignty and territorial integrity of the state.

The other draft, On the Political Opposition in the Verkhovna Rada of Ukraine, offered a broader definition of the opposition that included political forces that disagree with the President's course or the Cabinet's policies. The authors of the draft bill explained in their introductory note that the subject of regulation of this bill is the societal relations, connected to confrontation of certain political forces, represented in the Verkhovna Rada of Ukraine by deputies' groups and factions, <...> to the official political course of the President and the Cabinet of Ministers of Ukraine. Therefore, political opposition in the Verkhovna Rada was defined as parliamentary factions, groups that disagree with the political course of the President of Ukraine and/or the Cabinet of Ministers of Ukraine, and are not represented in the Cabinet of Ministers of Ukraine. According to another provision of Article 1 of the draft bill, membership in the political opposition may not be the reason for limitation of rights and liberties of those who engage in oppositional activity.

Both of the drafts specify subjects of political opposition in the parliament. The draft, proposed by Volodymyr Filenko, refers to the opposition in the parliament as the oppositional minority, or members of the parliament of Ukraine who belong to oppositional formations, and who number less than one half of the constitutional composition of the Verkhovna Rada of Ukraine. The category of subjects also includes the oppositional block, i.e., the oppositional formation, established by the decision of deputies' groups and political parties that have formed parliamentary factions that have engaged in oppositional activity. However, in order to become a true parliamentary opposition it is not enough to keep publicly expressing disagreement with a particular step made by the executive branch. The new provisions did not allow constructive opposition that was demonstrated only when useful. Article 8 of Volodymyr Filenko's draft law specified conditions and details of obtaining the status of an opposition formation. Specifically, to gain that status, a faction had to adopt, by the supreme official representative party body, the decision to engage in oppositional activity of the party and its parliamentary faction and announce the beginning of oppositional activity at a plenary session of the Verkhovna Rada of Ukraine. The most peculiar detail: among other things, the oppositional political parties whose parliamentary factions declared being in opposition, would have to call off their members from the Cabinet of

Ministers of Ukraine, national and local executive bodies throughout the country, and the Council of Ministers of the Crimea. By the way, due to this provision alone the draft might be doomed if still debated by the parliament, of the provision is rejected by the traditional opposition, i.e., left-wing factions whose representatives currently work in various bodies of the executive power. For instance, Speaker of the Crimean parliament Leonid Grach is one of the leaders of the Communist party of Ukraine and the chairman of the party's most vehement, Crimean wing. Minister of Social Policy and Labor Ivan Sakhn is also a member of the Communist party of Ukraine. This idea was timidly expressed when the draft bills were discussed in the session hall, though no particular names were given. As member of the Socialist party Stanislav Hurenko noted, if we adopt this decision, all district education inspectors, social security inspectors will be sacked, everybody will be sacked... Yet, he agreed that a honest opposition member should not also keep a position in the government. According to the draft law, submitted by Koval-Karpov-Medvedchuk, legal subjects of the oppositional political activity in the Verkhovna Rada of Ukraine are deputies' factions and groups that made decision on oppositional activity. Such a decision, given the specified conditions, it not so easy to make from a political point of view. Like the other draft, this one proposes to be consistently oppositional, which is not typical for most of eternal opposition representatives of the Ukrainian political class. According to the draft bill, the decision to become a part of the opposition should be formally announced at the parliamentary session. It also requires that representatives of political parties and election blocks resign from their positions in the national and subnational governments, including the Council of Ministers of the Crimea and the Presidential Administration as soon as their parliamentary factions formally announce themselves to be in opposition to the government. Authors of both of the drafts have a rather democratic perspective on providing rights to the political opposition. Chapter III of the Koval-Karpov-Medvedchuk draft stipulates that the opposition has the right for criticism, limited only by the provision that dissemination of critical information is allowed in accordance with the Constitution of Ukraine only. In order to exercise their right to disseminate information, subjects of oppositional activity have the right to use state-owned mass media, the public television and radio broadcasting, [and] establish their own media in the order specified by relevant laws of Ukraine, and to disseminate information among the population without using the mass media. According to the proposed document, by request of subjects of the political opposition in the Verkhovna Rada of Ukraine, national [state-owned] television and radio channels must provide free nation-wide broadcasting of official announcements about their oppositional activities at least once a week. The duration of such free broadcasts should be no less than 10 minutes and no more than 30 minutes. However, the proposal did not seem to suit the parliamentary minority currently performing the role of the opposition. According to leader of Progressive Socialists Natalia Vitrenko, the law on the opposition must stipulate the right of the opposition to communicate its opinions through the media, to protect its ideas. In particular, this [objective] can be advanced by means of establishment of the National Television and Radio Broadcasting Council on the proportionate representation principle, i.e., so that to reflect the real division of political forces in the parliament, she argues (Vysoky Zamok, June 6, 2000)

The draft contains peculiar provisions for financing of the opposition's activity in the parliament. According to the Koval-Karpov-Medvedchuk draft, the oppositional groups are free to choose funding sources for their activity within the requirements of the legislation of Ukraine, and financing of oppositional activity is performed in accordance with the Law On Political Parties. Since such law has not been adopted yet, the proposal sounds irrelevant.

Moreover, the political opposition has the right to be represented in parliamentary committees and commissions, the right to take part in exercising parliamentary monitoring and supervision, and the right to make statements in the parliament. The right for resistance is limited to the privilege to call on the Ukrainian people to resist anyone who makes an attempt to liquidate the Ukrainian state, its constitutional order, violate its territorial integrity or perform actions aiming at capturing the state power by force. The draft also envisages a possibility to create a single subject of the parliamentary opposition and, therefore, the only oppositional cabinet of ministers or the shadow government. According to the authors of the document, such a monopoly would encourage structural organization of the opposition and the parliament in general.

Volodymyr Filenko's draft envisages principle kinds of guarantees for oppositional formations in the Verkhovna Rada that differ little from the ones specified in the other draft. Specifically, the draft includes information, organizational, financial and logistical guarantees. However, unlike the other draft, Volodymyr Filenko's draft proposes to make clear legal provisions for representations of the opposition, among other agencies, in election and referendum commissions.

Hence, from the points of view of the authors of the two drafts, the most suitable way to regulate the opposition's activity is by means of adopting a special law rather than by means of amending existing

legislation. Yet, this perspective was challenged, among other actors, by experts of the parliamentary Committee for Legal Policy who argued that the majority of members of the Committee believe it ineffective to adopt a law on the opposition before the adoption of the Law on the Procedure of the Verkhovna Rada of Ukraine and proposed to reject both of the drafts. According to the secretary of the Committee Oleksandr Lavrynovych, it is inadequate to specify functions of just one part of the parliament until the issue of operation of the whole supreme law-making authority has not been settled and the law on the procedure has not been approved. In the shared opinion of the Committee, all issues of internal operation of the parliament are determined by the procedural regulations. Until the law on procedure is approved, all attempts to regulate any aspects of operation of the Verkhovna Rada by other laws would be anticonstitutional, argues Committee chairman Victor Zadorozhnyi (Den, June 3, 2000)

At the June 2 morning session of the parliament, MPs were asked to vote whether they wanted to continue debating the proposed issue of political opposition. The proposal to continue the debates and consider the bills specifying activity of the opposition was supported by 109 MPs out of 363 MPs present in the session hall that day. Eight MPs voted against, one abstained, and the other 245 simply did not vote at all. The by-faction voting results are noteworthy enough to be quoted here in full.

Conclusions about how the factions felt about legitimizing the issue of opposition at this stage can be based on comparing numbers of MPs in each faction who chose not to take part in the voting.

Non-faction members (46 MPs): Yes: 10; No: 2; Abstained: 0; Did not vote: 15; Absent: 19

Communist Party faction (115 MPs): Yes: 46; No: 0; Abstained: 0; Did not vote: 46; Absent: 23

Rukh (Kostenko) (21 MPs): Yes: 9; No: 0; Abstained: 0; Did not vote: 9; Absent: 3

Socialist Party faction (18 MPs): Yes: 9; No: 0; Abstained: 0; Did not vote: 8; Absent: 1

Green faction (17 MPs): Yes: 2; No: 0; Abstained: 0; Did not vote: 6; Absent: 9

People's Democratic Party faction (24 MPs): Yes: 3; No: 0; Abstained: 0; Did not vote: 18; Absent: 3

Socialist Democratic Party (United) faction (34 MPs): Yes: 0; No: 0; Abstained: 0; Did not vote: 29; Absent: 5

Reforms & Order - Reforms-Congress faction (14 MPs): Yes: 6; No: 0; Abstained: 0; Did not vote: 7; Absent: 1

Vidrodzhennya Rehioniv (Renaissance of the Regions) group (35 MPs): Yes: 2; No: 2; Abstained: 1;

Did not vote: 25; Absent: 5

Ukrainian People's Rukh (Udoenko) (18 MPs): Yes: 2; No: 0; Abstained:

0; Did not vote: 15; Absent: 1

Batkvishchyna (Fatherland) faction (35 MPs): Yes: 10; No: 0;

Abstained: 0; Did not vote: 18; Absent: 7

Trudova Ukraina (Working Ukraine) group (40 MPs): Yes:

4; No: 4; Abstained: 0; Did not vote: 32; Absent: 0

Solidarnist group (23 MPs): Yes: 6; No: 0;

Abstained: 0; Did not vote: 17; Absent: 0

When the issue was debated, a number of usually vehement representatives of opposition, including Natalia Vitrenko, Volodymyr Marchenko, Serhiy Holovaty, Oleksandr Yeliashkevych, Oleksandr Tkachenko and Leonid Kosakivsky were not present in the session hall. One of those few who voted against further work on the draft bills was former leader of the People's Democratic Party Anatoly Matvienko. As a result, both of the drafts were rejected. The MPs did not even accept any of the bills for the first reading. Remarkably, the strongest critics of the bills were among those who traditionally regarded themselves as the opposition to the government.

Most of the left-wingers agreed with the above argument of the Committee for Legal Policy. One of the Communist leaders Hennady Kriuchkov argued that since we are talking about the parliamentary opposition, its powers and order of activity must be specified in the law on the operation of the

Verkhovna Rada and the law on the [parliamentary] procedures (Den, June 3, 2000). Some of

Ukrainian left-wingers interpreted the proposed draft bills in a rather special way: according to member of the Communist faction Pavlo Baulin, when the world's greatest and most Ukrainian majority began

hiding evidence of its illegitimate arrival to power... it suddenly began exercising in creating laws on the opposition. Hence, the efforts to find legal solutions for the opposition issue disappeared from the

agenda smoothly and quietly. Noteworthy, no attempts to draft a bill on the opposition's rights have been made by the oppositional politicians. No wonder the majority was more than ready to put the

matter on a waiting list...